



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Reply To
Attn Of: ORC-158

August 24, 2001

R. Paul Beveridge
Heller Ehrman White &
McAuliffe
701 Fifth Avenue, Ste. 6100
Seattle, Washington 98104-7098

Re: Information Concerning Kaiser's Allocated Share

Dear Paul:

For several months now, EPA has been working to reach agreements for performance of all of the cleanup work in the Hylebos Waterway. At the same time we have been working to try to reach agreeable terms to allow appropriate parties to cash out. We are near to ending the negotiations if agreements are not reached. As you are aware, the end of August is EPA's deadline for hearing arguments and receiving information relative to cash out offers and cash out settlement terms.

I am enclosing documents that have been given to EPA by Atofina and General Metals who contend that Kaiser's allocated share is significantly underestimated.¹

The information EPA has received raises serious concerns about how the methodology applied by TLI Systems resulted in a grossly inaccurate result for Kaiser. There are particular issues and facts relative to Kaiser that produces this result that does not necessarily extend to other parties that have made cash out offers based on the TLI Systems allocation. The most significant issues and facts that illustrate these concerns are:

¹ Weyerhaeuser and Portac also presented information to EPA, but have asserted confidentiality, thus, unless made public, EPA will not consider their information for purposes of evaluating Kaiser's cash out offer. Nonetheless, pursuant to your May 28, 2001 letter to me, it is clear you are aware of Weyerhaeuser's issues with Kaiser's allocation, and Portac's issue of a similar nature.

- (1) Kaiser operated an aluminum smelting plant for over 40 years;
- (2) Kaiser's operations and manufacturing process generated numerous, large quantity waste streams;
- (3) high and low weight polyaromatic hydrocarbons were contained in Kaiser's manufacturing waste streams and were released by multiple pathways, e.g., Outfalls 1 and 2, Kaiser Ditch, particulate emissions, etc.;
- (4) large scope cleanup actions were conducted on Kaiser's plant property and in the Kaiser Ditch primarily to address PAH-laden scrubber sludge;
- (5) the significant volume of LPAH and HPAH-contaminated sediment in the Hylebos Waterway at surface and at subsurface affects the cost of the remedial action, and is in significant part attributable to Kaiser's releases;
- (6) TLI System's approach infers that subsurface contamination can be fairly measured by surface SQO exceedances, which unfairly biases the allocation in Kaiser's favor;
- (7) Subsurface data shows SQO exceedances requiring a large sediment volume to be dredged is not reflected in Kaiser's allocated share;
- (8) looking only to surface SQO exceedances without distinguishing large mass dischargers versus more minor dischargers resulted in a skewed result in favor of Kaiser to the disadvantage of more minor contributors;
- (9) for large mass dischargers, such as Kaiser, TLI Systems did not account for more extensive fate and transport of released hazardous substances; and
- (10) wood debris areas were added to the Superfund cleanup due to commingling of sediment contaminated with significant levels of other chemicals of concern, in particular, PAHs, which was not factored into Kaiser's allocated share.

The enclosed information is all in public records. Most, if not all, of the documents have existed in EPA's files and/or the Department of Ecology's files for many years. Sediment chemistry facts are supported by the pre-remedial design studies. The information presented to EPA most likely is, or should be, contained in the information considered by TLI Systems. There is no information that should surprise Kaiser.

Kaiser has known for several months about others' concerns with its allocated share. EPA was informed by Atofina and General Metals, as well as by you, that Kaiser discussed their concerns in a meeting on May 15, 2001. Kaiser has been aware of EPA's doubts since at least the meeting held on June 7th. Atofina and General Metals informed Kaiser what it believed its allocated share was in late June. See attached June 21, 2001 letter from

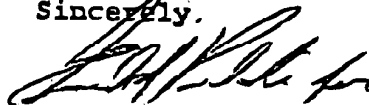
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Steve Parkinson and Mark Myers. In response to information you were getting, you provided EPA with Kaiser's responses to the issues you were hearing in your letters to me dated May 3, 2001 and May 28, 2001. EPA has considered all of your information and responses and has remained receptive to any information that would support Kaiser's allocated share.

As we have stated, the end of August is our time frame for receiving information, but as it stands now, EPA's information does not support Kaiser as eligible to cash out, but rather Kaiser should be a performing party. We understand due to your personal circumstances you may be unable to meet with EPA before August 31. Thus, we are willing to accept any additional information or documentation from you until September 5, 2001 relevant to this issue.

Please call me at (206) 553-1115 if you have questions about this matter.

Sincerely,



Lori Houck Cora
Assistant Regional Counsel

cc: Peter Contreras, ECL